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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,125	08/21/2006	Alistair James Carr	DAIRY88.016APC	8879
29995 7590 06/26/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER				
WONG, LESLIE A				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
06/26/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

# Office Action Summary

## Application No.

10/564,125

## Applicant(s)

CARR ET AL.

## Examiner

Leslie Wong

## Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27, 29 and 31-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27, 29 and 31-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/IS/CI)  
Paper No(s)/Mail Date 1/9/06, 10/19/07, 4/16/09

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 29 and 31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 29 and 31 are directed to a "use" which is non-statutory subject matter.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-27 and 32-34 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bhaskar et al (US 2003/0096036).

Bhaskar et al teach a process for preparing a concentrated milk protein ingredient comprising providing a solution having a kappa-casein containing milk protein which is a membrane filtration retentate; adjusting the divalent ion content of a said protein solution to a predetermined; adding a food grade milk clotting; deactivating or removing said enzyme; and concentrating said solution .

The claims differ as to the recitation that the enzyme serves to convert kappa-casein to para kappa-casein.

The conversion of kappa-casein to para kappa-casein would be no more than inherent and/or obvious to that of Bhaskar et al as the same components and process steps are used.

Claims 1-4, 8-27, and 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by General Foods (EP 0435573).

General Foods teaches a process for preparing a concentrated milk protein ingredient for cheese which comprises providing a solution having a kappa-casein containing milk protein which is a membrane filtration retentate; adjusting the divalent ion content of a said protein solution; adding a food grade milk clotting enzyme under reaction conditions appropriate to convert said kappa-casein to para kappa-casein while maintaining a solution; deactivating or removing said enzyme to terminate said conversion; and concentrating said solution (see entire document, especially column 7, lines 12-28, and Example I and II).

Claims 1-4, 6-27, and 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Schreiber Foods (WO 82/01806).

Schreiber Foods teaches a process for preparing a concentrated milk protein ingredient for cheese which comprises providing a solution having a kappa-casein containing milk protein; adjusting the divalent ion content of a said protein solution; adding a food grade milk clotting enzyme under reaction conditions appropriate to convert said kappa-casein to para kappa-casein while maintaining a solution; deactivating or removing said enzyme to terminate said conversion; and concentrating said solution (see entire document, especially page 12, lines 1-26, page 26, lines 26-31, and page 27, lines 8-18).

Claims 1-19 and 22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Poarch (US 4202907).

Poarch teaches a process for preparing a concentrated milk protein ingredient which comprises the steps of providing a solution having a casein containing milk protein; adjusting the divalent ion content of a said protein; adding a food grade milk clotting enzyme; deactivating or removing said enzyme to terminate said conversion; and concentrating said solution (see entire patent, especially methods 2-4, and claim 6).

The claims differ as to the recitation that the enzyme serves to convert kappa-casein to para kappa-casein.

The conversion of kappa-casein to para kappa-casein would be no more than inherent and/or obvious to that of Poarch as the same components and process steps are used.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (571)272-1411. The examiner can normally be reached on Tuesday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leslie Wong/  
Primary Examiner, Art Unit 1794

LAW  
June 22, 2009

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